

Supreme Court, U.S.
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Case Number 91-741

THE SUPREME COURT OF THE UNITED STATES

October Term 1991

Stanley C. Mann,
Petitioner,

v.

Judges Rigrup, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Brief in Opposition

Max D. Wheeler ?
SNOW, CHRISTENSEN &
MARTINEAU
Counsel of Record
for Respondents H. Wayne
Wadsworth, Watkiss &
Campbell; and Ray R.
Christensen and Christensen,
Jensen & Powell, P.C.
10 Exchange Place, Eleventh
Floor
Post Office Box 45000
Salt Lake City, Utah 84145
(801) 521-9000

Gainer M. Waldbillig
CHRISTENSEN, JENSEN & POWELL
Counsel of Record
for Respondent Insurance
Company of North America
175 South West Temple, #510
Salt Lake City, Utah 84101
(801) 355-3431

L.R. Curtis
HOLME ROBERTS & OWEN
Counsel of Record
for Respondents Brent V.
Manning and Holme, Roberts &
Owen
50 South Main, Suite 900
Salt Lake City, Utah 84144
(801) 521-5800

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QUESTION PRESENTED FOR REVIEW

The only issue properly before this Court is whether it should grant the petition for a writ of certiorari when no "special and important reasons therefor" have been advanced by the Petitioner, as required by Rule 10, Rules of the Supreme Court of the United States.

PARTIES TO THE PROCEEDING

Petitioner has identified the parties. Rule 29.1 requires the following additional information: Respondents Watkiss & Campbell and Christensen, Jensen & Powell are corporate bodies. Neither, however, involve parent companies or subsidiaries.

CIGNA Corporation is the parent company of Respondent Insurance Company of North America (INA).

Petitioner identifies respondent Holme Roberts & Owen (HRO) as "Holme, Roberts & Owen, Inc." HRO is not a corporation and thus does not involve any parent companies or subsidiaries.

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TABLE OF AUTHORITIES

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JURISDICTION OF THIS COURT

Petitioner's jurisdictional basis is the Tenth Circuit Court of Appeals' denial of his motion to transfer jurisdiction to the United States Supreme Court under 28 U.S.C. § 1631. The only statute, however, pursuant to which this Court will review Mann's petition is 28 U.S.C. § 1254(1). Rule 10.1, Rules of the Supreme Court of the United States, also provides in part: "A petition for a writ of certiorari will be granted only when there are special and important reasons therefor."

STATEMENT OF THE CASE

Petitioner filed in the United States District Court for the District of Utah pro se 42 U.S.C. § 1983 claims against certain present and former Utah District Court judges, all Utah Court of Appeals judges and the Chief Justice of the Utah Supreme Court, as well as lawyers and law firms involved in previous state court

proceedings filed by or against Mann,¹ and a company which provided insurance to one of the law firms. The previous state court proceedings include various civil suits, including custodial interference by conspiracy to commit murder, libel, malicious prosecution, breach of trust and child custody disputes.

Mann asserted in the federal district court pursuant to 42 U.S.C. § 1983 that respondent attorneys Wadsworth, Christensen, Trost, Young and Manning, and respondent law firms Watkiss & Campbell, Christensen, Jensen & Powell and Holme, Roberts & Owen violated his federal constitutional rights by the manner in which they pursued legal claims against Mann and defended claims filed by Mann against them or their clients, including INA. Mann ascribes criminal intent to zealous advocacy.

Following service of the federal complaint, respondents filed motions to dismiss and for

¹The law firms were sued under the theory of respondeat superior.

judgments on the pleadings. The bases of the motions were two-fold: (1) the absence of state action, and (2) the passing of the statute of limitations. Finding that it appeared "beyond a doubt that Mann could prove no set of facts supporting his claims which would entitle him to relief," the District Court granted the motions and a final judgment was entered May 24, 1990.

The briefs before the Tenth Circuit Court of Appeals addressed the same two issues: (1) whether there existed any state action on which Mann could premise a 42 U.S.C. § 1983 claim, and (2) whether Mann's claims were time barred. Affirming the district court, the Tenth Circuit held, without taking oral argument, that the respondent lawyers, law firms and INA were private defendants and that Mann's complaint failed to present anything but conclusory allegations to show agreement and concerted action between the private defendants and the state actor judges. In light of that ruling, the

Court of Appeals did not consider whether the claims were also time barred.

Mann petitions this Court for a Writ of Certiorari presenting eighteen (18) questions for review, all couched in ambiguous and conclusory language. The Petition, however, does contain a section entitled "REASON FOR GRANTING WRIT" which provides a little more detail. (Petition, at 46). First, petitioner asserts the Tenth Circuit improperly refused his motions to transfer his appeal directly to this Court. (Petition, at 46-47).² Mann draws his conclusion from the Tenth Circuit's ruling that his

§ 1983 action seeks federal court review of particular applications of law by the Utah state courts. Plainly, the federal district court was without jurisdiction to perform such a task, which is reserved to the Supreme Court.

Mann's second reason for requesting a writ of certiorari is that the federal district court

²Mann also writes in his Petition, however, that he "was informed by the United States Supreme Court" on June 21, 1990, that his appeal "would have to be filed with the United States Court of Appeals for the Tenth Circuit" (Petition, at 2).

granted and the Tenth Circuit affirmed dismissal of his complaint "without the Complaint being answered or discovery allowed." (Petition, at 48).

Mann's third basis for a writ of certiorari is that the respondent judges intentionally violated his constitutional rights and "consciously committed criminal acts in so doing." (Petition, at 51). Mann thus concludes that "[c]ertainly [the judges] are not immune ... for depriving someone of their Constitutional Rights." (Petition, at 52).

Finally, Mann revives a Utah state court order entered in a libel suit filed against Mann in 1981 which requires petitioner to submit any revised manuscripts of a book written by Mann, and determined to be libelous, for court review before publication. Mann asserts that the order issued only to "protect one 'well connected' individual," respondent Wadsworth. (Petition, at 62). Mann further claims that, "This matter has never been addressed." (Petition, at 58).

ARGUMENT SUMMARY

Rule 10.1, Rules of the Supreme Court of the United States, provides three examples of the types of cases which present the requisite "special and important reasons" for granting a writ of certiorari. Mann's petition is not of the same or even similar character. It merely disagrees with the district court's and the Tenth Circuit's decisions which are based on well-established and widely accepted precedent.

ARGUMENT

Rule 10.1 of the Supreme Court Rules sets forth examples that "indicate the character of reasons that will be considered" sufficiently "special and important" to justify granting a writ of certiorari. For instance, certiorari will be granted upon a showing that "a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; ...; or has so far departed from the accepted and usual course of judicial proceedings ... as to

call for an exercise of this Court's power of supervision." Also sufficient would be a petition involving a United States court of appeals ruling "on an important question of federal law which has not been, but should be, settled by this Court"

Mann's petition does not begin to approach the type of case recognized by Rule 10.1. The Tenth Circuit's decision in this matter is based on well-established and widely accepted principles of law.

Assuming the allegations in Mann's complaint to be true and liberally construing pro se pleadings, the federal district court found and the Tenth Circuit affirmed that the complaint failed to state a claim upon which relief could be granted by a federal court. An essential element of a 42 U.S.C. § 1983 claim is that the defendants/respondents "act under color of state law." Mann failed to plead any set of facts which could establish these respondent lawyers,

law firms and INA acted "under color of state law" or acted in a conspiracy with state actors.

There is no foundation for, and indeed petitioner has not made any allegation that the Tenth Circuit's decision in this matter conflicts with another court of appeals, or that the Tenth Circuit departed from "the accepted and usual course of judicial proceedings," or that the Tenth Circuit ruled on a novel question of federal law that this Court has not, but should, settle.

Instead, petitioner asserts that the Tenth Circuit should have transferred the appeal to this Court pursuant to 28 U.S.C. § 1631, that the complaint was dismissed prior to an answer from respondents or discovery being allowed, that judges should not be immune when they violate someone's constitutional rights and that a 1985 order in a 1981 libel suit should have been addressed.

28 U.S.C. § 1631 provides for the transfer of an appeal if the court with which the appeal was

filed lacks jurisdiction. In this matter, petitioner filed a complaint in federal district court which was dismissed for failing to state a viable claim. That decision was appealed to the Tenth Circuit and affirmed. There is nothing in the record to indicate the appeal was filed in the wrong court, and there is nothing particularly "special and important" about the issue raised.

Nor is there anything novel about a complaint being dismissed prior to the filing of an answer or discovery. Rule 12, Federal Rules of Civil Procedure, provides for that exact situation.

The same defect plagues Mann's third reason for his petition. Initially, whether judges should be immune for violating someone's constitutional rights begs the question. There is nothing in the record, absent Mann's conclusory allegations, that the judges violated his constitutional rights. Furthermore, for purposes of the petition, the issue is whether the Tenth Circuit's decision in this matter conflicts with

another court of appeals, or a decision of this court, or departs from accepted judicial proceedings. No such claim is made by petitioner.

Mann's last assertion that this Court, in the first instance, should review his allegation that a 1985 order in a libel case is unconstitutional is far from the type of case for which a writ of certiorari is granted. The claim is untimely, should have been appealed to the Utah Supreme Court in 1985, and in a 42 U.S.C. § 1983 context still fails to involve any state action on the part of these respondent lawyers, law firms and INA.

Overall, Mann's petition is further plagued with his failure to grasp the distinction between a review of prior state court decisions and the merits of his 42 U.S.C. § 1983 claims. The only issue currently before this Court is whether a writ of certiorari should issue to the Tenth Circuit for its handling of Mann's Section 1983 claims. All of Mann's assertions other than the existence of "state action" and judicial

immunity, such as any prior state court decision, constitute misstatements of fact and law as discussed in Rule 15.1, Rules of the Supreme Court, and are irrelevant to the merits of petitioner's Section § 1983 claim.

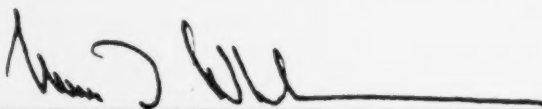
CONCLUSION

For the above-stated reasons, these respondents respectfully request that this Court deny Mann's Petition for a Writ of Certiorari.

DATED this 26th day of November, 1991.

SNOW, CHRISTENSEN & MARTINEAU

By



Max D. Wheeler
Counsel of Record for
Respondents
Wadsworth, Watkiss & Campbell,
Christensen and Christensen,
Jensen & Powell



DATED this 26th day of November, 1991.

CHRISTENSEN, JENSEN & POWELL

By Giner Waldfella

Elwood P. Powell Giner M. Waldfella
Counsel of Record for Respondent
Insurance Company of North
America

DATED this 26th day of November, 1991.

HOLME, ROBERTS & OWEN

By L. R. Curtis

L. R. Curtis
Counsel of Record for
Respondents Manning and Holme,
Roberts & Owen